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Trustee for the consolidated SIPA Liquidation of
Bernard L. Madoff Investment Securities LLC
and Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-1789 (BRL)

SIPA Liquidation

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

**TRUSTEE'S COUNTER-DESIGNATION OF ADDITIONAL ITEMS TO BE INCLUDED
IN THE RECORD ON APPEAL AND COUNTER-STATEMENT OF THE ISSUES TO
BE PRESENTED ON APPEAL**

Pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure, Appellee Irving H. Picard (“Trustee”), trustee for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. § 78aaa *et seq.*, and the estate of Bernard Madoff individually, hereby submits the following counter-designation of additional items to be included in the record on appeal (the “Counter-Designation”) and counter-statement of the issues to be presented on appeal (the “Counter-Statement”) in connection with the appeal filed on January 18, 2013 (ECF No. 5202) by the appellants (the “Non-Claimants”) from the Order Denying Non-Claimants Request to Intervene, entered on January 3, 2013 (the “Order”), by the United States Bankruptcy Court for the Southern District of New York (Lifland, J) (ECF No. 5185), and respectfully submits as follows:

**COUNTER-DESIGNATION OF ADDITIONAL ITEMS TO BE INCLUDED
IN THE RECORD ON APPEAL**

The Trustee hereby counter-designates the following items to be included in the record on appeal:

Picard v. NTC & Co., Adv. No. 10-04504 (BRL) (Bankr. S.D.N.Y.)

Filed On:	Docket No.	Docket Text
1/30/2012	18	Amended Complaint against MARVIN A. GOLDENBERG, as a subsequent beneficiary,, DORIS M. PEARLMAN REVOCABLE TRUST, as a subsequent beneficiary,, HEIDI PEARLMAN AND JILL BETH PEARLMAN, in their capacity as the Personal Representatives of the Estate of Doris Pearlman, in their capacity as co-trustees of the Doris M. Pearlman Revocable Trust, and, Estate of Doris M. Pearlman Filed by Marc E. Hirschfield on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, and Bernard L. Madoff. (Attachments: # 1 Exhibit A# 2 Exhibit B# 3 Exhibit C) (Hirschfield, Marc) (Entered: 01/30/2012)

***Picard v. Katz*, 11-cv-03605-JSR (S.D.N.Y.)**

Filed On:	Docket No.	Docket Text
11/29/2011	72	ORDER. This Order will serve to confirm that, during a telephone conference between the parties and chambers, the Court granted permission to Gregory Schwed and Philip Bentley, attorneys for defendants in other, similar adversarial proceedings, to submit, by November 30, 2011, an amicus brief of no more than five double-spaced pages addressing the issue left open in footnote six of the Court's Opinion and Order dated September 27, 2011. The Trustee, SIPC, and the defendants may each respond in a brief of no more than five double-spaced pages, provided that they do so before December 7, 2011. (Signed by Judge Jed S. Rakoff on 11/28/2011) (rjm) (Entered: 11/30/2011)
11/30/2011	73	MEMORANDUM OF LAW (<i>Amicus Brief on "Reset to Zero" Methodology, Pursuant to November 28, 2011 Court Authorization</i>). Document filed by Kenneth L. Evenstad Revocable Trust u/a/d May 2, 2000. (Schwed, Peter) (Entered: 11/30/2011)
12/06/2011	74	REPLY MEMORANDUM OF LAW re: 73 Memorandum of Law <i>Reply of SIPC to the Amicus Brief on "Reset to Zero"</i> . Document filed by Securities Investor Protection Corporation. (Attachments: # 1 Certificate of Service)(Bell, Kevin) (Entered: 12/06/2011)
9/27/2011	40	OPINION AND ORDER:#100832 In summary, the Court hereby dismisses all Counts of the Amended Complaint except Counts 1 and 11. Under Count 1, the Trustee may recover defendants' net profits simply by proving that the defendants did not provide value for the monies received, but the Trustee may recover the return of the defendants' principal only by proving that the defendants willfully blinded themselves to Madoff Securities' fraud. Finally, the Trustee can subordinate the defendants' own claims against the estate only by making the same showing required under Count 1 or its equitable equivalent. The parties are directed to appear in court tomorrow, September 28, 2011 at 3:00 P.M. to set a schedule for all further proceedings relating to the remaining claims. (Status Conference set for 9/28/2011 at 03:00 PM before Judge Jed S. Rakoff.)(Signed by Judge Jed S. Rakoff on 9/27/2011) (dj) Modified on 9/28/2011 (jab). (Entered: 09/27/2011)

In re Madoff Sec., No. 12-mc-0115-JSR (S.D.N.Y.) (Consolidated Proceedings)

Filed On:	Docket No.	Docket Text
5/16/2012	107	ORDER [Order Text Omitted] (Signed by Judge Jed S. Rakoff on 5/12/2012) (js) (Entered: 05/17/2012)
6/25/2012	196	MOTION to Dismiss <i>Regarding Antecedent Debt Issues</i> . Document filed by Antecedent Debt Defendants Listed in Appendix A of the Court's May 12, 2012 Order. Responses due by 7/25/2012 Return Date set for 8/20/2012 at 04:00 PM.(Kirby, Richard) (Entered: 06/25/2012)
6/25/2012	198	DECLARATION of Richard A. Kirby in Support re: 196 MOTION to Dismiss <i>Regarding Antecedent Debt Issues..</i> Document filed by Antecedent Debt Defendants Listed in Appendix A of the Court's May 12, 2012 Order. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D)(Kirby, Richard) (Entered: 06/25/2012)
6/25/2012	199	MEMORANDUM OF LAW in Support re: 196 MOTION to Dismiss <i>Regarding Antecedent Debt Issues. On Behalf of Withdrawal Defendants as Ordered by the Court on May 12, 2012.</i> Document filed by Antecedent Debt Defendants Listed in Appendix A of the Court's May 12, 2012 Order. (Kirby, Richard) (Entered: 06/25/2012)
7/25/2012	250	MEMORANDUM OF LAW in Opposition re: 196 MOTION to Dismiss <i>Regarding Antecedent Debt Issues</i> . Document filed by Securities Investor Protection Corporation. (Attachments: # 1 Affidavit of service)(Bell, Kevin) (Entered: 07/25/2012)
8/8/2012	273	REPLY MEMORANDUM OF LAW in Support re: 196 MOTION to Dismiss <i>Regarding Antecedent Debt Issues</i> . Consolidated Reply to Trustee's and SIPC's Oppositions to Motion to Dismiss. Document filed by Antecedent Debt Defendants Listed in Appendix A of the Court's May 12, 2012 Order. (Kirby, Richard) (Entered: 08/08/2012)

SIPC v. BLMIS, 08-1789-BRL (Bankr. S.D.N.Y.) (Time-Based Damages Filings)

Filed On:	Docket No.	Docket Text
7/17/2012	4920	Notice of Motion to Set Hearing / Motion for Order Scheduling Hearing on Trustee's Motion Affirming Denial of Time-Based Damages Adjustment to Customer Claims filed by David J. Sheehan on behalf of Irving H. Picard. with hearing to be held on 8/9/2012 at 10:00 AM at Courtroom 623 (BRL) Objections due by 8/2/2012, (Attachments: # 1 Proposed Order)(Sheehan, David) (Entered: 07/17/2012)

Filed On:	Docket No.	Docket Text
7/17/2012	4921	Affidavit of Service of Motion for Order Scheduling Hearing on Trustee's Motion Affirming Denial of Time-Based Damages Adjustment to Customer Claims (related document(s)4920) filed by David J. Sheehan on behalf of Irving H. Picard. (Sheehan, David) (Entered: 07/17/2012)
7/18/2012	4925	Affidavit of Service Affidavit of Mailing of Notice for July 17, 2012 of Motion for Order and Motion for Order Scheduling Hearing on Trustees Motion Affirming Denial of Time-Based Damages Adjustment to Customer Claims, and [Proposed] Scheduling Order (related document(s)4920) filed by John J Collins Jr. on behalf of AlixPartners LLP. (Collins, John) (Entered: 07/18/2012)
8/2/2012	4957	Response To Trustee's Motion For Order Setting Common Briefing Schedule To Address Time-Based Adjustment Issues (related document(s)4920) filed by Marcy R. Harris on behalf of HHI Investment Trust #2; King Harris, in his fiduciary capacity; Katherine P. Harris, in her fiduciary capacity; Toni H. Paul, in her fiduciary capacity; Denise Saul, in her fiduciary capacity; S. (Harris, Marcy) (Entered: 08/02/2012)
8/6/2012	4963	Notice of Adjournment of Hearing / Notice of Adjournment of Scheduling Hearing on Trustee's Motion Affirming Denial of Time-Based Damages Adjustment to Customer Claims (related document(s)4920) filed by David J. Sheehan on behalf of Irving H. Picard. (Sheehan, David) (Entered: 08/06/2012)
8/22/2012	4996	Affidavit of Service of Notice of Adjournment of Scheduling Hearing on Trustee's Motion Affirming Denial of Time-Based Damages Adjustment to Customer Claims (related document(s)4963) filed by Marc E. Hirschfield on behalf of Irving H. Picard. (Hirschfield, Marc) (Entered: 08/22/2012)
8/24/2012	5001	Response / Trustee's Reply to Objections to Trustee's Motion for an Order to Schedule Hearing on Time-Based Damages Issue (related document(s)4920, 4952, 4957) filed by Jorian L. Rose on behalf of Irving H. Picard. with hearing to be held on 8/29/2012 at 10:00 AM at Courtroom 623 (BRL) (Attachments: # 1 Exhibit A# 2 Exhibit B) (Rose, Jorian) (Entered: 08/24/2012)
8/24/2012	5002	Affidavit of Service of Trustee's Reply to Objections to Trustee's Motion for an Order to Schedule Hearing on Time-Based Damages Issue (related document(s)5001) filed by Marc E. Hirschfield on behalf of Irving H. Picard. (Hirschfield, Marc) (Entered: 08/24/2012)
8/27/2012	5004	Response to Trustee's Reply to Objections to Trustee's Motion for an Order to Schedule Hearing on Time-Based Adjustment Issues (related document(s)5001, 4290, 4957) filed by Marcy R. Harris on behalf of HHI Investment Trust #2 and Defendants Listed on Exhibit A. (Attachments: # 1 Exhibit A# 2 Exhibit B) (Harris, Marcy) (Entered: 08/27/2012)

Filed On:	Docket No.	Docket Text
8/28/2012	5005	Notice of Adjournment of Hearing on Motion for Order Scheduling Hearing on Trustee's Motion Affirming Denial of Time-Based Damages Adjustment to Customer Claims (related document 4920) filed by David J. Sheehan on behalf of Irving H. Picard. (Sheehan, David) (Entered: 08/28/2012)
8/28/2012	5007	Affidavit of Service of Notice of Adjournment of Hearing on Motion for Order Scheduling Hearing on Trustee's Motion Affirming Denial of Time-Based Damages Adjustment to Customer Claims and Notice of Agenda for Matters Scheduled for Hearing on August 29, 2012 at 10:00 A.M. (related document(s)5006, 5005) filed by David J. Sheehan on behalf of Irving H. Picard. (Sheehan, David) (Entered: 08/28/2012)
8/30/2012	5009	Response / Trustee's Reply to Second HHI Objection to Trustee's Motion for an Order to Schedule Hearing on Time-Based Damages Issue (related document(s)4920, 5004, 4957) filed by David J. Sheehan on behalf of Irving H. Picard. with hearing to be held on 9/5/2012 at 10:00 AM at Courtroom 623 (BRL) (Attachments: # 1 Exhibit A) (Sheehan, David) (Entered: 08/30/2012)
8/30/2012	5011	Affidavit of Service of Trustee's Reply to Second HHI Objection to Trustee's Motion for an Order to Schedule Hearing on Time-Based Damages Issue (related document(s)5009) filed by David J. Sheehan on behalf of Irving H. Picard. (Sheehan, David) (Entered: 08/30/2012)
11/7/2012	5069	Notice of Adjournment of Hearing / Notice of Adjournment for Time-Based Damages Issue (related document(s)5038) filed by Jorian L. Rose on behalf of Irving H. Picard. with hearing to be held on 2/13/2013 (check with court for location) Objections due by 12/3/2012, (Rose, Jorian) (Entered: 11/07/2012)
12/3/2012	5118	Objection to Motion /Trustee's Motion for an Order Affirming Trustee's Calculations of Net Equity and Denying Time-Based Damages (related document(s)5038) filed by Bruce Buechler on behalf of Irrevocable Charitable Remainder Trust of Yale Fishman and the Glenn Akiva Fishman Charitable Remainder Trust. (Attachments: # 1 Exhibit A and Exhibit B) (Buechler, Bruce) (Entered: 12/03/2012)
12/3/2012	5120	Memorandum of Law In Opposition (related document(s)5038) filed by Paula J. Warmuth on behalf of Michael Most. (Attachments: # 1 Exhibit A - Part One# 2 Exhibit A - Part Two# 3 Exhibit A - Part Three) (Warmuth, Paula) (Entered: 12/03/2012)
12/3/2012	5122	Response to Motion -- Memorandum for MUUS Independence Fund LP and Michael W. Sonnenfeldt in Response to the Trustees Time-Based Damages Motion (related document(s)5038) filed by Robert J. Kaplan on behalf of Muus Independence Fund LP, Michael W. Sonnenfeldt. (Kaplan, Robert) (Entered: 12/03/2012)

Filed On:	Docket No.	Docket Text
12/3/2012	5125	Opposition by Samdia Family LP to Trustee's Time Based Damages Motion (related document(s)5038) filed by Joel L. Herz on behalf of Samdia Family, LP. (Herz, Joel) (Entered: 12/03/2012)
12/3/2012	5126	Objection to Motion (related document(s)5038) filed by Andrew Howard Sherman on behalf of 1994 Trust for the Children of Stanley and Pamela Chais, 1996 Trust for the Children of Stanley and Pamela Chais, 1999 Trust for the Grandchildren of Stanley and Pamela Chais, Ari Chais 1999 Trust, Ari Chais Transferee Trust No. 1, Benjamin Paul Chasalow 1999 Trust, Benjamin Paul Chasalow Transferee Trust No. 1, Emily Chais, Mark Chais, William Chais, Wrenn Chais, Chais Investments, Ltd., Chais Management, Inc., Chais Management, Ltd., Chais Venture Holdings, Chloe Frances Chais 1994 Trust, Chloe Frances Chais Transferee Trust No. 1, Emily Chais 1983 Trust, Emily Chais Issue Trust No. 1, Emily Chais Issue Trust No. II, Emily Chais Trust No. 2, Emily Chais Trust No. 3, Jonathan Wolf Chais 1996 Trust, Jonathon Wolf Chais Trust, Justin Robert Chasalow 1999 Trust, Justin Robert Chasalow Transferee Trust No. 1, Madeline Celia Chais 1992 Trust, Madeline Chais Transferee Trust No. 1, Mark Hugh Chais 1983 Trust, Mark Hugh Chais Issue Trust No. I, Mark Hugh Chais Issue Trust No. II, Mark Hugh Chais Trust No. 2, Mark Hugh Chais Trust No. 3, Onondaga, Inc., Onondaga, Inc. Pension Plan, Rachel Allison Chasalow 1999 Trust, Rachel Allison Chasalow Transferee Trust No. 1, Tali Chais 1997 Trust, Tali Chais Transferee Trust No. 1, Unicycle Corporation, Unicycle Trading Company, William & Wrenn Chais 1994 Family Trust, William Frederick Chais 1983 Trust, William Frederick Chais Issue Trust No. I, William Frederick Chais Issue Trust No. II, William Frederick Chais Trust No. 2, William Frederick Chais Trust No. 3. (Sherman, Andrew) (Entered: 12/03/2012)
12/3/2012	5127	Opposition Brief <i>Memorandum Of Law Of Customer-Claimant The Kostin Co. In Opposition To The Trustee's Motion For An Order Affirming Trustee's Calculations of Net Equity And Denying Time-Based Damages</i> (related document(s)5038) filed by Bernard J. Garbutt III on behalf of The Kostin Company. (Garbutt, Bernard) (Entered: 12/03/2012)
12/3/2012	5131	Objection to Motion Customers' Objection to Trustee's Motion for an Order Denying Time-Based Damages (related document(s)5038) filed by Helen Chaitman on behalf of Marsha Peshkin. (Chaitman, Helen) (Entered: 12/03/2012)
12/10/2012	5142	Memorandum of Law of Securities and Exchange Commission Supporting a Constant Dollar Approach to Valuing Customers' Net Equity Claims for Fictitious Securities Positions(Related Document #5038) filed by Patricia Schrage on behalf of Securities and Exchange Commission. (Schrage, Patricia) (Modified on 12/11/2012)

Filed On:	Docket No.	Docket Text
		to Add Link Related Document) (Richards, Beverly). (Entered: 12/10/2012)
1/8/2013	5191	Objection to Trustee's Motion for an Order Denying Time-Based Damages filed by David Gross. (Rouzeau, Anatin) (Entered: 01/08/2013)
01/23/2013	5212	Amended Time-Based Damages Scheduling Order signed on 1/23/2013 (related document(s)5022). (Saenz De Viteri, Monica) (Entered: 01/23/2013)

Appellant Adversary Proceeding Bankruptcy Filings

Adv. Pr. No.	Docket No.	Document Title
10-05110	18	Declaration of Richard A. Kirby in Support of Motion to Withdraw (related document(s)17) filed by Richard A. Kirby on behalf of United Congregations Mesora. (Kirby, Richard) (Entered: 12/14/2011) (ECF No. 18)
10-05054	18	Declaration of Richard A. Kirby in Support of Motion to Withdraw filed by Richard A. Kirby on behalf of Chesed Congregations of America. (Kirby, Richard) (Entered: 12/14/2011) (ECF No. 18)
10-04488	27	Declaration of Richard A. Kirby in Support of Motion to Withdraw filed by Richard A. Kirby on behalf of A. Trust et al. (Kirby, Richard) (Entered: 12/14/2011) (ECF No. 27)
10-04384	19	Declaration of Richard A. Kirby in Support of Motion to Withdraw (related document(s)18) filed by Richard A. Kirby on behalf of Edara Partnership, Lanx BM Investments, LLC, The Lanx Fund II, LP, Wolfson Cousins, LP. (Kirby, Richard) (Entered: 12/14/2011) Memorandum of Law in Support of MTWR-Kirby Declaration (Entered: 12/14/2011) (ECF No. 19)
10-05220	20	Motion to Withdraw the Reference Memorandum (related document(s)19) filed by Richard A. Kirby on behalf of The Aaron Wolfson 1983 Trust, The Abraham Wolfson 1983 Trust, The Alisa Wolfson Safier 1986 Trust, The Daniel Wolfson 1983 Trust, The Elishiva Wolfson 1983 Trust, The Nadine R. Wolfson 1991 Trust, The Rebecca Wolfson Wolmark 1983 Trust, The Wolfson Trust, Wolfson Equities, Aaron Wolfson, individually. Filing fee collected, receipt #8137007. (Kirby, Richard) (Entered: 12/14/2011)Memorandum of Law in Support of MTWR (Entered: 12/14/2011) (ECF No. 20)
10-05220	21	Motion to Withdraw the Reference Declaration of Richard Kirby in Support (related document(s)20) filed by Richard A. Kirby on behalf of The Aaron Wolfson 1983 Trust, The Abraham Wolfson 1983 Trust, The Alisa Wolfson Safier 1986 Trust, The Daniel Wolfson 1983 Trust, The Elishiva Wolfson 1983 Trust, The Nadine R. Wolfson 1991 Trust, The

Adv. Pr. No.	Docket No.	Document Title
		Rebecca Wolfson Wolmark 1983 Trust, The Wolfson Trust, Wolfson Equities, Aaron Wolfson, individually. Filing fee collected, receipt #8137007. (Attachments: # 1 Exhibit A and B) (Kirby, Richard) (Entered: 12/14/2011)Memorandum of Law in Support of MTWR-Kirby Declaration (Entered: 12/14/2011) (ECF No. 21)
10-04374	16	Declaration of Richard A. Kirby in Support of Motion to Withdraw (related document(s)15) filed by Richard A. Kirby on behalf of Ezriel Munk, in his capacity as Trustee of the Wolfson descendants 1983 Trust and the ZW 1999 Trust and Zev Wolfson, Wolfson Descendants 1983 Trust, ZW 1999 Trust, ZWD Investments, LLC. (Kirby, Richard) (Entered: 12/14/2011)Memorandum of Law in Support of MTWR-Kirby Declaration (Entered: 12/14/2011) (ECF No. 16)
10-04350	21	Declaration by Richard A. Kirby in Support of Motion to Withdraw (related document(s)20) filed by Richard A. Kirby on behalf of Emmanuel Gettinger, South Ferry #2 LP, South Ferry Building Company, Aaron Wolfson, Abraham Wolfson, Zev Wolfson. (Kirby, Richard) (Entered: 12/14/2011)Memorandum of Law in Support of MTWR-Kirby Declaration (Entered: 12/14/2011) (ECF No. 21)
10-04387	28	Declaration filed by Richard A. Kirby on behalf of Larry B. Alexander, in his capacity as personal representative of the Estate of Marianne Lowrey, in his capacity as trustee for the Marianne B. Lowrey Trust and in his capacity as successor partner of Coldbroo, Coldbrook Associates Partnership, individually and in its capacity as general partner of Turtle Cay Partners, Whitney Hanlon Lowrey Gaeta, individually, in her capacity as personal representative of the Estate of Marianne Lowrey, in her capacity as trustee for the Marianne B. Lowrey Trust and in her capacity as successor pa, Tracy McDonald Lowrey Lenehan, individually, in her capacity as personal representative of the Estate of Marianne Lowrey, in her capacity as trustee for the Marianne B. Lowrey Trust and in her capacity as successor, James Lowrey, ind, capacity as gen prtnr of TurtleCayPartners,capacity as persnl rep of Estate Of Marianne Lowrey,capacity as t'ee for MarianneB.LowreyTrust,&capacity as SucPrtnr ColdbrookAssociatesPartne, Jessica Lee Lowrey, individually, in her capacity as personal representative of the Estate of Marianne Lowrey, in her capacity as trustee for the Marianne B. Lowrey Trust and in her capacity as successor partner, Marianne B. Lowrey Trust. (Attachments: # 1 Exhibit A & B) (Kirby, Richard) (Entered: 03/30/2012) (ECF No. 28)

Joinders Filed in District Court

Case No.	Document Title, Date, and ECF No.
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11-cv-09447	MOTION TO WITHDRAW THE BANKRUPTCY REFERENCE. Bankruptcy Court Case Numbers: 10-4488A , 08-1789 (BRL).Document filed by Ernest Wachtel, Goldie Appelgrad, Bessie Kaufman, Abraham Adeff, Albert Kleinman, Emanuel Gettinger, Nachema Singer, Rebecca Trust, Rachel Twersky, Israel Grossman, Al. Trust, R. Trust, Kalman Halpern, Joseph Katz, Leon Shiffman, Minnie Schenker, Freda Rosenberg, Morris Milewski, A.N. Trust, Solomon B. Shapiro, Simcha Appelgrad, Zev Wolfson, Morris Nussbaum, Benjamin Schenker, Clara Meth, Mary Peters, Gerda Levinsohn, Chana Wolfson, Alisa Trust, David Kaufman, Chaim Twersky, Miriam Beren, R.A. Trust, B.F.&W. Realty Company, AA. Trust, Aaron Zeitlin, Max Mandis, Irving Rosen, Zelda Elbaum, Moses Leiter, Aaron Trust, Sara Klein, Rachel Zeitlin, Rose Wachtel, A.O.N. Trust, Abraham N. Trust, N. Zwi Leiter, Anthony Margadonna, Helen Younger, Zevi Harris, Sol Klein, Roslyn Gettinger, Max Weil, Samuel Goldstein, Hyman Mandelbaum, Sarah Spindell, A. Trust, Abraham Trust, Leo Schechter, Julia Margadonna, Morris Goldstein, Mildred Shapiro, Abraham Wolfson, Razel Faskowitz, David G. Aviv, Helen Elbaum, Lee Siegmund, South Ferry Building Company. (bkar) (Entered: 12/23/2011) (ECF No. 1)
11-cv-09451	MOTION TO WITHDRAW THE BANKRUPTCY REFERENCE. Bankruptcy Court Case Numbers: 10-4350A , 08-1789 (BRL).Document filed by Abraham Wolfson, Emmanuel Gettinger, Zev Wolfson, Aaron Wolfson, South Ferry Building Company, South Ferry #2 LP. (bkar) (Entered: 12/22/2011) (ECF No. 1)
11-cv-09446	MOTION TO WITHDRAW THE BANKRUPTCY REFERENCE. Bankruptcy Court Case Numbers: 10-5054A , 08-1789 (BRL).Document filed by Chesed Congregations of America. (bkar) (Entered: 12/22/2011) (ECF No. 1)
11-cv-09448	MOTION TO WITHDRAW THE BANKRUPTCY REFERENCE. Bankruptcy Court Case Numbers: 10-4384A , 08-1789 (BRL).Document filed by Edara Partnership, The Lanx Fund II, LP, Wolfson Cousins, LP, Lanx BM Investments, LLC. (bkar) (Entered: 12/22/2011) (ECF No. 2) *Docket Entry Error Lists ECF No. 2 as Declaration, but document is the Motion.
11-cv-09450	MOTION TO WITHDRAW THE BANKRUPTCY REFERENCE. Bankruptcy Court Case Numbers: 10-4374A , 08-1789 (BRL).Document filed by Ezriel Munk, Wolfson Descendants 1983 Trust, ZW 1999 Trust, ZWD Investments, LLC. (bkar) (Entered: 12/22/2011) (ECF No. 1)
11-cv-09445	MOTION TO WITHDRAW THE BANKRUPTCY REFERENCE. Bankruptcy Court Case Numbers: 10-5110A , 08-1789 (BRL).Document filed by United Congregations Mesora. (bkar) (Entered: 12/22/2011) (ECF No. 1)
11-cv-09449	MOTION TO WITHDRAW THE BANKRUPTCY REFERENCE. Bankruptcy Court Case Numbers: 10-5220A , 08-1789 (BRL).Document filed by The Elishiva Wolfson 1983 Trust, The Alisa Wolfson Safier 1986 Trust, The Rebecca Wolfson Wolmark 1983 Trust, The Nadine R. Wolfson 1991 Trust, The Aaron Wolfson 1983 Trust, Aaron Wolfson, Wolfson Equities, The Abraham Wolfson 1983 Trust, The Daniel Wolfson 1983 Trust, The Wolfson Trust. (bkar) (Entered: 12/23/2011) (ECF No. 1)

COUNTER-STATEMENT OF THE ISSUES TO BE PRESENTED ON APPEAL

The Trustee hereby submits the following counter-statement of the issues on appeal:

1. Whether the Bankruptcy Court correctly denied the Non-Claimants' request to intervene in a motion that was expressly limited to the calculation of SIPA customer claims when (i) the Non-Claimants chose not to file customer claims before the statutory bar date and therefore have no right to payments from the estate, and (ii) those Non-Claimants, defendants in the Trustee's avoidance actions, successfully sought withdrawal of the reference to the District Court of, *inter alia*, their defenses under section 548(c) of the Bankruptcy Code, which they allege is related to the proceeding before the Bankruptcy Court but is already being heard by the District Court.

2. Whether the Bankruptcy Court correctly denied the Non-Claimants' request to intervene in the Time Based Damages proceeding when their counsel, who represent other avoidance action defendants who did file customer claims, have already filed the same pleadings which the Non-Claimants seek to file in the Time-Based Damages proceeding.

3. Whether the Non-Claimants may take an appeal as of right of the order denying them permission to intervene where (i) the Trustee filed a motion for a scheduling order in the Time-Based Damages Proceeding which determined who may participate in the proceeding, and of which the Non-Claimants had notice; (ii) the Non-Claimants did not object to this motion; (iii) similarly-situated parties objected on the same bases that the Non-Claimants now raise in their intervention motion; (iv) after a hearing, the Bankruptcy Court ruled that parties such as Non-Claimants may not participate; (v) no appeal was taken of this prior ruling; and (vi) the Non-Claimants waited several months to seek to intervene.

Dated: New York, New York
February 14, 2013

Respectfully submitted,

s/ David J. Sheehan

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and Bernard Madoff*